



General Assembly

Amendment

February Session, 2006

LCO No. 4429

SB0049304429SD0

Offered by:

SEN. COLAPIETRO, 31st Dist.

REP. STONE, 9th Dist.

REP. GREENE, 105th Dist.

To: Senate Bill No. **493**

File No. 105

Cal. No. 115

"AN ACT CONCERNING SUBCONTRACTOR CLAIMS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 49-42 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) Any person who performed work or supplied materials for
6 which a requisition was submitted to, or for which an estimate was
7 prepared by, the awarding authority and who does not receive full
8 payment for such work or materials within sixty days of the applicable
9 payment date provided for in subsection (a) of section 49-41a, as
10 amended, or any person who supplied materials or performed
11 subcontracting work not included on a requisition or estimate who has
12 not received full payment for such materials or work within sixty days
13 after the date such materials were supplied or such work was
14 performed, may enforce such person's right to payment under the

15 bond by serving a notice of claim on the surety that issued the bond
16 and a copy of such notice to the contractor named as principal in the
17 bond [within] not later than one hundred eighty days [of the
18 applicable payment date provided for in subsection (a) of section 49-
19 41a, or, in the case of a person supplying materials or performing
20 subcontracting work not included on a requisition or estimate, within
21 one hundred eighty days] after the last date any such materials were
22 supplied or any such work was performed by the claimant. For the
23 payment of retainage, as defined in section 42-158i, such notice shall be
24 served not later than one hundred eighty days after the applicable
25 payment date provided for in subsection (a) of section 49-41a of the
26 2006 supplement to the general statutes. The notice of claim shall state
27 with substantial accuracy the amount claimed and the name of the
28 party for whom the work was performed or to whom the materials
29 were supplied, and shall provide a detailed description of the bonded
30 project for which the work or materials were provided. If the content
31 of a notice prepared in accordance with subsection (b) of section
32 49-41a, as amended, complies with the requirements of this section, a
33 copy of such notice, served [within] not later than one hundred eighty
34 days [of] after the [payment] date provided for in [subsection (a) of
35 section 49-41a] this section upon the surety that issued the bond and
36 upon the contractor named as principal in the bond, shall satisfy the
37 notice requirements of this section. [Within] Not later than ninety days
38 after service of the notice of claim, the surety shall make payment
39 under the bond and satisfy the claim, or any portion of the claim which
40 is not subject to a good faith dispute, and shall serve a notice on the
41 claimant denying liability for any unpaid portion of the claim. The
42 notices required under this section shall be served by registered or
43 certified mail, postage prepaid in envelopes addressed to any office at
44 which the surety, principal or claimant conducts business, or in any
45 manner in which civil process may be served. If the surety denies
46 liability on the claim, or any portion thereof, the claimant may bring
47 action upon the payment bond in the Superior Court for such sums
48 and prosecute the action to final execution and judgment. An action to
49 recover on a payment bond under this section shall be privileged with

50 respect to assignment for trial. The court shall not consolidate for trial
51 any action brought under this section with any other action brought on
52 the same bond unless the court finds that a substantial portion of the
53 evidence to be adduced, other than the fact that the claims sought to be
54 consolidated arise under the same general contract, is common to such
55 actions and that consolidation will not result in excessive delays to any
56 claimant whose action was instituted at a time significantly prior to the
57 motion to consolidate. In any such proceeding, the court judgment
58 shall award the prevailing party the costs for bringing such proceeding
59 and allow interest at the rate of interest specified in the labor or
60 materials contract under which the claim arises or, if no such interest
61 rate is specified, at the rate of interest as provided in section 37-3a
62 upon the amount recovered, computed from the date of service of the
63 notice of claim, provided, for any portion of the claim which the court
64 finds was due and payable after the date of service of the notice of
65 claim, such interest shall be computed from the date such portion
66 became due and payable. The court judgment may award reasonable
67 attorneys fees to either party if upon reviewing the entire record, it
68 appears that either the original claim, the surety's denial of liability, or
69 the defense interposed to the claim is without substantial basis in fact
70 or law. Any person having direct contractual relationship with a
71 subcontractor but no contractual relationship express or implied with
72 the contractor furnishing the payment bond shall have a right of action
73 upon the payment bond upon giving written notice of claim as
74 provided in this section.

75 (b) Every suit instituted under this section shall be brought in the
76 name of the person suing, in the superior court for the judicial district
77 where the contract was to be performed, irrespective of the amount in
78 controversy in the suit, but no such suit may be commenced after the
79 expiration of one year after the [applicable payment date provided for
80 in subsection (a) of section 49-41a, or, in the case of a person supplying
81 materials or performing subcontracting work not included on a
82 requisition or estimate, no such suit may be commenced after the
83 expiration of one year after the] last date that such materials were

84 supplied or any such work was performed, except that any such suit
85 solely seeking payment for retainage, as defined in section 42-158i,
86 shall be commenced not later than one year after the date payment of
87 such retainage was due, pursuant to the provisions of subsection (a) of
88 section 49-41a of the 2006 supplement to the general statutes.

89 (c) The word "material" as used in sections 49-33 to 49-43, inclusive,
90 shall include construction equipment and machinery that is rented or
91 leased for use (1) in the prosecution of work provided for in the
92 contract within the meaning of sections 49-33 to 49-43, inclusive, or (2)
93 in the construction, raising or removal of any building or improvement
94 of any lot or in the site development or subdivision of any plot of land
95 within the meaning of sections 49-33 to 49-39, inclusive."

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	49-42
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